

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/691,771	10/23/2003	Joel William Olney	461391/0029	6706	
759	7590 09/20/2005		EXAMINER		
Steven B. Pokotilow			MAI, HUY KIM		
Stroock & Stroock & Lavan LLP			L ADTIBUT	PAPER NUMBER	
180 Maiden Lane			ART UNIT	PAPER NUMBER	
New York, NY 10038			2873		

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	•			•	QU		
		Applica	tion No.	Applicant(s)	0		
Office Action Commons		10/691,	771	OLNEY, JOEL WILL	∟IAM		
	Office Action Summary	Examin	er	Art Unit	•		
		Huy K. N		2873			
Period fo	The MAILING DATE of this commun or Reply	nication appears on ti	he cover sheet v	vith the correspondence addr	ess		
THE - Exte after - If the - If NO - Failt Any	ORTENED STATUTORY PERIOD F MAILING DATE OF THIS COMMUN INSIGN of time may be available under the provision SIX (6) MONTHS from the mailing date of this com to period for reply specified above is less than thirty (0) Defined for reply is specified above, the maximum source to reply within the set or extended period for repl reply received by the Office later than three months and patent term adjustment. See 37 CFR 1.704(b).	IICATION. s of 37 CFR 1.136(a). In no emunication. 30) days, a reply within the stratutory period will apply and y will, by statute, cause the apply and the statute of the statute.	event, however, may a atutory minimum of th will expire SIX (6) MO oplication to become A	reply be timely filed irty (30) days will be considered timely. NTHS from the mailing date of this com-	munication.		
Status							
1)□	Responsive to communication(s) fil	ed on					
2a) <u></u> □	This action is FINAL .	2b)⊠ This action is	non-final.				
3)[]	3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the pract	tice under <i>Ex parte</i> C	<i>Quayle</i> , 1935 C.	D. 11, 453 O.G. 213.			
Disposit	ion of Claims						
5)⊠ 6)⊠ 7)⊠	Claim(s) 1-3,7-11,21-28 and 32-37 4a) Of the above claim(s) is/a Claim(s) 1-3 and 7-11 is/are allowe Claim(s) 21-28 and 33-37 is/are rejudiction(s) 32 is/are objected to. Claim(s) are subject to restriction	are withdrawn from c d. ected.	onsideration.				
Applicat	ion Papers						
10)⊠	The specification is objected to by the The drawing(s) filed on <u>02 June 200</u> Applicant may not request that any objected that any object of the oath or declaration is objected the specific of the specific of the specific or the specific of the specific of the specific or the specific	04 is/are: a) accepection to the drawing(s) g the correction is requ	be held in abeya	ince. See 37 CFR 1.85(a). g(s) is objected to. See 37 CFR	` '		
		to by the Examiner. I	TOLE THE ATTACHE	d Office Action of form FTO	102.		
12)□ a)	Acknowledgment is made of a claim All b) Some * c) None of: 1. Certified copies of the priority 2. Certified copies of the priority 3. Copies of the certified copies application from the Internation See the attached detailed Office action	or documents have be or documents have be of the priority documental Bureau (PCT Ru	een received. een received in a nents have been ule 17.2(a)).	Application No n received in this National St	tage		
2) Notice No	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (Imation Disclosure Statement(s) (PTO-1449 or No(s)/Mail Date		Paper No	Summary (PTO-413) (s)/Mail Date Informal Patent Application (PTO-1 	52)		

DETAILED ACTION

1. Prosecution on the merits of this application is reopened on claims 21-28,32-37 considered unpatentable for the reasons indicated below:

Claim Rejections - 35 USC § 103

- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 3. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Schwartz et al.

The Smith reference discloses in figure 1 sunglasses/goggles (see col. 7, lines 15-18 and col. 3, lines 57-60) comprising a frame 20 constructed and adapted to maintain a lens 22 therein; and a sealing member 32 (attached to the frame 20) comprising a "resilient member" deflatable bladder 36 and a "gasket member" foam rubber layer 34 covering the rear surface of the "resilient member" bladder 36 for engaging a person's skin proximate the eyes (see col. 3, lines 66-68 and col. 4, lines 1-3). However the reference is silent on how the sealing member 32 is attached to the frame and does not state whether or not it is removable.

The Schwartz et al reference teach that goggles which keep water out with an airtight seal (see col. 2, lines 38-44 are advantageously constructed such that the pad is removable in order to replace the pad if damaged in order to save the cost of replacing the entire goggles (see col. 3, lines 17-230. Schwartz et al discloses various means of removably attaching the pad to the frame in figures 4-13 (see col. 6, lines 15-47). Because the eyewear of Schwartz et al. is designed to be

Application/Control Number: 10/691,771

Art Unit: 2873

watertight similar to the eyewear of Smith et al., the eyewear disclosed in the references are considered to be analogous art.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed and adapted the sealing member 32 consisting of the resilient member 36 and the gasket 34 in the sunglasses/goggles of Smith et al. to be removable as taught by Schwartz et al because, as the Smith et al reference is silent on the exact means for attaching the sealing member 32, one of ordinary skill in the art would have been motivated to use any known means such as the removable means disclosed in Schwartz et al. which advantageously allow the sealing member to be replaced if it is damaged as taught by Schwartz et al (see col. 3, lines 17-23).

4. Claim 21-28,33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Schwartz et al.

Regarding claims 21,33-36, the structure in claims 21,33-36 is similar to that in the above rejected claim 37, the rejection applied to claim 37 would apply to claims 21,33-36 as follows:

The Smith reference discloses in figure 1 sunglasses/goggles (see col. 7, lines 15-18 and col. 3, lines 57-60) comprising a frame 20 constructed and adapted to maintain a lens 22 therein; and a sealing member 32 (attached to the frame 20) comprising a "resilient member" deflatable bladder 36 and a "gasket member" foam rubber layer 34 covering the rear surface of the "resilient member" bladder 36 for engaging a person's skin proximate the eyes (see col. 3, lines 66-68 and col. 4, lines 1-3). However the reference is silent on how the sealing member 32 is attached to the frame and does not state whether or not it is removable.

Art Unit: 2873

The Schwartz et al reference teach that goggles which keep water out with an airtight seal (see col. 2, lines 38-44 are advantageously constructed such that the pad is removable in order to replace the pad if damaged in order to save the cost of replacing the entire goggles (see col. 3, lines 17-230. Schwartz et al discloses various means of removably attaching the pad to the frame in figures 4-13 (see col. 6, lines 15-47). Because the eyewear of Schwartz et al. is designed to be watertight similar to the eyewear of Smith et al., the eyewear disclosed in the references are considered to be analogous art.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed and adapted the sealing member 32 consisting of the resilient member 36 and the gasket 34 in the sunglasses/goggles of Smith et al. to be removable as taught by Schwartz et al because, as the Smith et al reference is silent on the exact means for attaching the sealing member 32, one of ordinary skill in the art would have been motivated to use any known means such as the removable means disclosed in Schwartz et al. which advantageously allow the sealing member to be replaced if it is damaged as taught by Schwartz et al (see col. 3, lines 17-23).

Regarding claims 22-28, Smith et al. and Schwartz et al. do not explicitly state the material of the gasket member as claimed in claims 22-28, however such limitations are well known in the art of spectacles. A person having ordinary skill in the art at the time the invention was made would have found it obvious to made the gasket of Smith in view of Schwartz et al by the various materials as claimed because one material has properties better than another material, it would have been obvious to a person having general skill in this art to select a known material on the

Application/Control Number: 10/691,771 Page 5

Art Unit: 2873

basis of its suitability for intended used as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

5. Claims 1-3,7-11 are allowed.

6. Claim 32 is objected to as being dependent upon a rejected base claim, but would be

allowable if rewritten in independent form including all of the limitations of the base claim and

any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

Smith et al and Schwartz et al fails to disclose the limitations "said removable sealing member

comprising one or more ventilation opening". Therefore, these limitations in combination with

claimed subject matter could be allowable over the prior art of record.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

Huy Mai

Primary Examiner
Art Unit 2873

HKM/ August 24, 2005